

**OPEGA Recommendation for Project Direction  
(as presented to the GOC of the 126<sup>th</sup> Legislature on 6-26-14)**

**DHHS Division of Licensing and Regulatory Services  
Child Care Licensing**

**Background**

On February 28, 2014, the GOC voted to place this topic on OPEGA's work plan after considering a request by the Chairs of the Joint Standing Committee on Health and Human Services. OPEGA began preliminary research in March of 2014. As part of the preliminary research phase OPEGA has:

- reviewed issues discussed by the GOC at the February 28, 2014 meeting;
- reviewed statutes, rules, and policies related to child care licensing and investigations of child abuse & neglect in out of home settings;
- reviewed public media coverage of the Sunshine Child Care & Preschool Investigation from January and February of 2014;
- spoke with and reviewed information provided by former DLRS employees;
- reviewed Child Care Aware of America's report "We Can Do Better" 2013 Update regarding child care program and oversight standards and Maine's ranking among the states;
- reviewed historical and current budget data for DLRS Child Care Licensing;
- reviewed historical and current DLRS organizational charts;
- reviewed previous and current DLRS strategic plans;
- interviewed DLRS management to learn about recent management reviews and investigations of DLRS and its Child Care Licensing Unit; and
- developed a general understanding of data available in Maine's Automated Child Welfare Information System (MACWIS).

**Summary of Preliminary Research and Analysis**

The Department of Health and Human Services Division of Licensing and Regulatory Services (DLRS) is responsible for licensing and monitoring of child care centers, family child care providers and nursery schools. Within DLRS, the Children's Licensing and Investigations Unit oversees child care licensing and the investigation of child abuse and neglect in out of home settings, including child care settings.

Community Care Workers (CCW) are responsible for inspecting licensed child care providers and license applicants. CCWs also investigate complaints alleging noncompliance with license rules. When there are findings of noncompliance, DLRS now issues a statement of deficiency (SOD) requiring the provider to develop and submit a plan of action that includes a timeframe for correcting deficiencies. According to DLRS management, SODs were introduced early in 2013. CCWs also provide technical assistance to providers and make unannounced visits to monitor compliance with licensure requirements. Currently there are 1,253 family child cares, 727 child care facilities and about 78 nursery schools for a total of 2,058 licensed child care facilities.

DLRS may issue a Conditional License when there are ongoing uncorrected deficiencies or findings of serious noncompliance issues during an inspection or unannounced visit to a child care provider, or it is otherwise determined to be in the best interest of the public. A Conditional License includes a directed plan of action written by DLRS that the provider must follow. If the provider does not correct the deficiencies as per the Conditional License, the license is voided or revoked. If very serious issues are identified, DLRS may, with the approval of the DHHS Commissioner, issue an administrative suspension that immediately closes a facility for up to 10 days pending further investigation or prior to obtaining a court ordered emergency suspension.

Out of Home Investigators within the DLRS Community Programs unit, are responsible for investigating complaints alleging child abuse and/or neglect in out of home settings, including licensed child care facilities and nursery schools. Substantiated allegations can result in a corrective letter, issuance of a Conditional License or license revocation.

In January 2014, DLRS findings of child abuse and neglect at a child care center in Lyman were publicly reported. These findings were from investigations in 2012 and again in 2013. The Division took no enforcement action in 2012 when there were findings of abuse and neglect. In 2013, a second investigation also had findings, but DLRS took no action for several months.

This case brought into question serious concerns about the safety of children in child care facilities as well as DLRS' performance with regard to the timeliness of investigations of allegations of abuse and neglect, and the timeliness and appropriateness of enforcement actions when investigations resulted in findings. According to some former DLRS employees, the Lyman case was not unusual. They reported a lack of enforcement action by DLRS on findings of licensure violations, high CCW caseloads that adversely affected their ability to perform their jobs and an unhealthy organizational culture causing employees to fear retaliation, including dismissal, for bringing forward issues of concern.

In response to the Lyman case, DLRS conducted an internal investigation and found both system and human errors to be root causes. The Division is currently implementing a strategic plan for FY14-15 that management feels will address many of the issues brought to light by the Lyman case. The strategic plan includes five broad initiatives: Resource Utilization, Accountability, Work Force Development, Provider Relations and Regulations/Statutes. Each initiative has a number of objectives associated with it. For each objective, the plan outlines action steps by calendar quarter for January 1, 2014 through June 30, 2015.

Some of the objectives DLRS is working on or has recently implemented are:

- hiring and training additional staff to reduce caseloads;
- implementing performance metric reporting;
- establishing a licensing action advisory panel;
- developing standard operating procedures and work flows;
- writing supervisor job descriptions;
- developing a web portal for parents to access information;
- instituting a differential monitoring program;
- developing an amnesty program for unlicensed child care providers who opt to seek licensure; and
- assessing the need for out of home investigation rules different from those of the Office of Child and Family Services.

DLRS provided OPEGA with a progress report as of June 15, 2014 for each objective (attached). In May, DLRS added 16 new positions including 13 CCWS, 2 supervisors, and 1 clerical position, using federal Child Care Development Block Grant funds (see attached June 2014 organizational chart). DLRS has hired and trained the new personnel. Currently the 13 new CCW positions are limited period, expiring in May 2016. DLRS plans to make these permanent positions in the next biennial budget. With the new CCWs, caseloads are now down from 180 to 82.

The Division has also begun to implement performance metrics for staff. Examples include making initial contact with complainants within 5 days of approval/assignment of a licensure complaint, requiring a narrative to be documented in the case file within 10 days of a complaint, and completing inspections of licensure violations and Out of Home Investigations of allegations of child abuse and neglect within 35 days. DLRS has also established the license action advisory panel and it meets weekly to consider enforcement actions; however policies and procedures for the panel have not yet been developed. According to DLRS, parents can now call or email the Division and obtain a child care facility's licensing history.

### **OPEGA's Recommendation**

Based on our preliminary research, OPEGA recommends delaying further detailed review for one year. DLRS has made some important changes to its organizational structure and licensing and enforcement processes. In addition, DLRS has many other changes in progress that it believes will improve the Division's functionality and ensure the safety of children in child care facilities. It is our assessment that the actions taken and planned will, if effectively implemented, address the concerns that led to this review topic being placed on our work plan. However, these changes, which are very recent or still in progress, have not been in place long enough to conduct a meaningful review of their effectiveness.

A year from now, OPEGA could assess whether DLRS implemented the specific objectives in the FY14-15 Strategic Plan, and if so, how well they are working to improve DLRS' performance. An OPEGA review in one year could also examine the extent to which the Division's practices, policies and procedures are adequate to ensure complaints alleging noncompliance of child cares with licensure requirements or child abuse or neglect are investigated and addressed timely and that children in child cares are safe and not at-risk.

Over the coming year, the Legislature may want to consider monitoring DLRS' implementation of its Strategic Map objectives via the Health and Human Services Committee or the GOC.

As previously agreed by the GOC, the issues regarding DLRS' organizational culture and treatment of employees will be incorporated into OPEGA's separate review of DHHS Organizational Culture, which is on the current work plan.